



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

Kishore S. Thota
Director

G. Bryan Slater
Secretary of Labor

December 7, 2023

Complainant: Debbie Yates
Association: Madison Plantation Owners Association
File Number: 2024-01219

The Office of the Common Interest Community Ombudsman has been designated to review final adverse decisions and determine if they may be in conflict with laws or regulations governing common interest communities. Such determination is within the sole discretion of the Office of the Common Interest Community Ombudsman and not subject to further review.

Complaint

The Complainant submitted a complaint to the Association dated June 12, 2023. The Association provided a response to the association complaint dated October 22, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 21, 2023 and received the same date.

Authority

The Common Interest Community Ombudsman (CICO), as designee of the Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18VAC 48-70-120) The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with §54.1-2354.4 (Code of Virginia) and the Common Interest Community Ombudsman Regulations (Regulations). A NFAD results from an association complaint submitted through an association complaint procedure. The association complaint must be submitted in accordance with the applicable association complaint procedure and, as very specifically set forth in the Regulations, "shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

Under the Regulations, "applicable laws and regulations" pertain solely to common interest community laws and regulations. Any complaint that does not concern common interest community laws or regulations is not appropriate for submission through the association complaint procedure and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners' Association Act, and the Virginia Real Estate Cooperative Act.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

This Determination is final and not subject to further review.

Determination

The Complainant included three complaints in her association complaint. The first complaint alleged a failure to provide meeting minutes for board meetings held February 21 and March 28 of 2023. The second complaint alleged that the Association failed to revise its reserve study in accordance with the law and did not provide a basis of its estimate to members prior to a business meeting. The third complaint alleged that the Association failed to provide an operating account increase basis of estimate. These are all possible violations of §55.1-1815¹ of the Property Owners' Association

¹ A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and

Act, except for the reserve study allegation which may be a violation of §55.1-1826 of that act.

In its response to the complaints, the Association stated that it had already sent out the meeting minutes to all members in June. Based on the emails included in the NFAD, the Association also told the Complainant that minutes could be obtained from a board member or at a meeting in May. In response to the allegation that the Association failed to revise its reserve study, failed to provide a basis of estimate for current and future reserve study cost, and a basis of estimate for the association operating account increase, the Association stated that "other issues regarding our funds were also properly addressed months ago."

The minutes issue seems to be related to a failure to distribute minutes to the owners, not a failure to provide access to them upon written request by the Complainant, although it is not entirely clear from the NFAD. Either way, it appears the Association has provided the membership the referenced minutes. As to distribution of minutes to members, while the association may have distributed minutes to owners in the past, there is no requirement in common interest community law that it do so. Instead, association members can request access to the minutes so that they can examine and copy them. There does not appear to be a violation of common interest community law in relation to providing meeting minutes.

The two complaints related to a failure to provide "the basis of estimate" are a bit confusing. There is no such term used in common interest community law, and the complainant did not fully explain what she meant when asking for those records. In addition, in most cases, a basis of estimate, as used in various industries, is usually a document that lays out the methodology by which a business or agency arrived at an estimate for an upcoming project. If the Complainant was seeking such a document, unless it actually existed at the time of the request, the Association is not required to provide it, since there is no obligation in common interest community law that an Association must create a document in response to a document request. In addition, associations are not required to provide copies of documents to members, instead, an association is required to provide access to the books and records for an owner in good standing so that he or she can examine and copy the requested books or records.

The Complainant did request vendor quotes in her request as well as price inflation over the life of the asset, description of road and gate work, the professional

2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

estimate or projected costs, and the projected life for each capital component. If the Complainant is in good standing, and these documents exist as actual records, the Association should have provided her access to these records so that she could examine and copy them. It does not appear that the Complainant was given the opportunity to examine these records, based on the Association's response to the complaint. Instead, the Association simply said it "discussed and confirmed that the other issues regarding our funds were properly addressed." To the extent that the Complainant was seeking any documents other than specifically set forth in her complaint, she would need to submit a new request to the Association specifically identifying any other documents she might wish to access.

There was also a request for the basis of estimate and the work to be performed for the repair of a gazebo roof, for review by association members prior to the annual meeting. An individual member cannot make a blanket request for access to the books and records on behalf of the entire membership. If the complainant wishes to see this information, she will need to make a request on her own behalf.

The reference to a failure to revise the Reserve Study was not supported by specific information indicating how the reserve study should be revised nor was there information regarding how it was currently in violation of common interest community law. There were several references to the age of the reserve study and the complainant wrote in emails to the Association that a new reserve study needed to be undertaken since it had been more than five years since the last one, but this was not part of the complaint submitted to the Association and therefore cannot be addressed here.

Required Actions

As noted above, it is unclear if the Association provided the Complainant the documents that she specifically requested in her emails. If it has not done so, and if the requests are specific enough for the Association to determine what is being requested and if the documents exist, it must provide the Complainant an opportunity to examine and copy those documents. The Association must contact the Complainant via email within two weeks of the date of this determination and provide her the opportunity to examine the books and records. The Association must copy this office (cicombudsman@dpor.virginia.gov) on its email correspondence with the Complainant regarding this matter. A failure to address this will result in a referral to the Common Interest Community Board for whatever action it may deem appropriate.

The Association's final decision was not in compliance with the requirements of the Common Interest Community Ombudsman Regulations, specifically 18 VAC 48-70-50 (9) and (10)². It failed to include the Association's registration number, it failed to

² 9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.

notify the Complainant of her right to file a Notice of Final Adverse Decision, and it failed to provide her the contact information for this office. The Association is on notice that it must adhere to the Regulations for any future complaints submitted via the association complaint procedure. A failure to carry out its responsibilities under the Regulations may result in a referral to the Common Interest Community Board for whatever action it may deem appropriate.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Madison Plantation Owners' Association

10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.